

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr D
Licensee:	Betfair Pty Ltd
Proceedings:	Gambling Dispute for determination by Northern Territory Racing Commission (pursuant to section 109Y(2) of the <i>Racing and Betting Act 1983</i>)
Heard Before: (on papers)	Ms Cindy Bravos (Presiding Member) Ms Amy Corcoran Mr Kris Evans
Date of Decision:	23 March 2022

Background

1. On 27 April 2020, the complainant lodged a gambling dispute with the Northern Territory Racing Commission (the Commission) against the licensed betting exchange operator Betfair Pty Ltd (Betfair) pursuant to section 109Y(2) of the *Racing and Betting Act 1983* (the Act).
2. The substance of the gambling dispute is that following the complainant self-excluding himself from using the gambling services of Betfair in April 2015, he was then able to gamble again with Betfair over the next four years by operating his brother's Betfair betting account.
3. The complainant has advised the Commission that over that four year period during which he continued to gamble with Betfair, he deposited approximately \$200,000 into his brother's Betfair account using a bank card that showed his name and not his brother's name and that he also withdrew \$50,000 to a bank account in his name and not that of his brother.
4. The complainant lodged his gambling dispute with the Commission following Betfair taking the action to block his brother's Betfair betting account when it identified that his brother's Betfair betting account was associated with a self-excluded Betfair betting account (being the closed account of the complainant). The complainant has submitted that Betfair should have identified that he was using his brother's Betfair betting account some four years earlier when he first made a deposit into his brother's Betfair betting account using a bank card in his own name.
5. The complainant has also submitted to the Commission that his gambling activity while operating his brother's Betfair betting account was of a nature that should also have alerted Betfair that the betting account was being operated by someone who was a 'problem gambler' and as such, Betfair should have made contact with the betting account holder (the complainant's brother) to establish whether he was betting within his means. In support of this submission, the complainant has stated that while operating his brother's betting account, his betting patterns were erratic, he deposited large amounts of money on a weekly basis and that when he had money in the betting account, he often gambled for extended periods of time.

6. The outcome the complainant is seeking is for the Commission to determine that the bets made during the period that the complainant operated his brother's Betfair betting account, were not lawful and for Betfair to refund over \$230,000 to the complainant, being the losses incurred by the complainant over this period of time.
7. In this respect, it is important to note that Betfair did not fall under the regulatory regime of the Commission until September 2016 when it was granted a betting exchange licence by the Commission and as such, the Commission can only examine the actions of Betfair from this date forward.
8. Information was gathered from each of the parties involved by Licensing NT officers appointed as betting inspectors by the Commission and provided to the Commission, which determined that there was sufficient information before it to consider the gambling disputes on the papers.

Consideration of the Issues

Third-Party Operation of a Betting Account

9. The complainant has submitted to the Commission that some six months after he was excluded from using the services of Betfair to gamble, he began to gamble with Betfair again by utilising a Betfair betting account that was in the name of his brother, and which was an account which his brother did not use. The complainant is of the view that Betfair failed to provide a responsible gambling environment given that it did not identify that he was operating his brother's Betfair betting account until some four years later despite him having deposited over \$200,000 into the betting account using a bank card in his name and withdrawing \$50,000 to a bank account also in his name, and not that of his brother.
10. Betfair records show that the complainant opened a betting account with Betfair on 5 August 2013 and that this betting account was permanently self-excluded on 8 April 2015.
11. Betfair records also show that the complainant's brother opened a betting account with Betfair on 26 December 2011, which was later closed by Betfair on 26 March 2020. The closure of the complainant's brother's Betfair betting account occurred as a result of Betfair conducting an audit on withdrawals which identified that the bank account being utilised for withdrawals on the complainant's brother's Betfair betting account matched that of the bank account details of the complainant's closed Betfair betting account.
12. The bank account matching the complainant's details was first registered to the complainant's brother's Betfair betting account on 26 August 2015 which as detailed earlier, was well before Betfair fell under the regulatory control of the Commission. Having said that, the Commission notes that this date corresponds with the complainant's claims that he began to operate his brother's Betfair betting account several months after his own Betfair betting account was closed due to a permanent self-exclusion being placed on it.
13. All betting exchange operators licensed in the Northern Territory promulgate a comprehensive set of terms and conditions for wagering which both parties are bound by when an account is opened and each time a bet is struck. These terms and conditions operate to ensure legislative compliance and the commercial efficacy of the business model of a sports bookmaker.

14. Relevant to this gambling dispute are the following Betfair terms and conditions:
- Section 1 - Part B
"We are entitled to assume that offers and payments are made by you. You should change your password on a regular basis and never disclose it to a third party. You undertake to protect your username and password in the same way that you would in respect of your bank cards and any failure to do so shall be at your sole risk and expense. If another person accesses your account, you are solely responsible for all their actions whether or not their access was authorised by you and you hereby indemnify us and hold us harmless against all costs, claims, expenses and damages howsoever arising in connection with the use of or access to your account by any third party."
 - Section 1 - Part B
"...nor will you acquire or attempt to acquire an account which has been opened in the name of a third party."
 - Section 8.2.1 - Part B
"You agree that you will not access any other Betfair account to use any of our services or products from which you have excluded, during the period of any such self-exclusion."
15. While there is very little doubt that the complainant (given his own admissions) operated his brother's Betfair betting account for a significant period of time, it is also clear that both the complainant and his brother's actions were in contravention of the Betfair terms and conditions to which they had both agreed to when they first opened their respective Betfair betting accounts.
16. In order to minimise the harm that may be caused by online gambling, the Commission introduced the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (the 2019 Code) which came into effect on 26 May 2019, having replaced the Northern Territory Code of Practice for Responsible Gambling 2016 (the 2016 Code).
17. Both the 2016 Code and the 2019 Code place a responsibility on sports bookmakers and betting exchange operators licensed by the Commission to facilitate a customer to self-exclude from using their services and where a person requests that they be permanently self-excluded for any reason or is permanently excluded by the online gambling provider due to problem-gambling concerns, the online gambling provider must not knowingly permit that person to re-open or open a new account.
18. Given that the complainant chose to utilise his brother's Betfair betting account, it is clear to the Commission that Betfair are not in breach of either of the Codes given that the complainant did not open a new betting account with Betfair nor was he successful in re-opening his closed betting account. To the Commission's mind, the only real point of contention is the length of time it took Betfair to identify that the complainant was operating his brother's Betfair account given that the complainant's bank account was first registered to the complainant's brother's Betfair betting account on 26 August 2015.

19. In response to this specific issue, Betfair advised the Commission that given there was no reason for Betfair to believe that the complainant's brother's betting account was being operated by a third-party - there was no cause for Betfair to review the betting account prior to the 16 March 2020 audit on withdrawals.
20. Of interest to the Commission is that while the complainant operated his brother's Betfair betting account, he did not raise any issues with Betfair during that period and it was only once Betfair closed his brother's betting account and as a result, the complainant was no longer able to access the wagering services provided, that the complainant became disgruntled with Betfair.

Red Flag Behaviours

21. As detailed at paragraph 5 above, the complainant has submitted that his gambling activity while he operated his brother's Betfair betting account should have triggered a response from Betfair to contact the betting account holder to ascertain whether he was betting within his means.
22. Given the now widespread availability and ease of access to the providers of online gambling services through smartphones and personal computers, the Commission expects that all online gambling operators licensed by the Commission have implemented effective policies and procedures which include appropriate oversight arrangements to ensure that all of their customers are gambling with money that they can afford to lose and without experiencing harm.
23. While the Commission recognises that not all online gambling customers who are experiencing harm associated with their gambling activity will be able to be immediately identified by an online gambling provider, the Commission does expect that its online gambling licensees will have policies, procedures and practices in place that support the prevention of harm and that are focused on consumer interests as against the potential revenue that may be realised from those customers.
24. This expectation is clearly detailed in the 2019 Code, specifically clause 3.2 which states:

3.2 Recognising potential problem gamblers

Where appropriate, a customer who displays some, or a number, or a repetition of red flag behaviours should be monitored by an online gambling provider and appropriate customer interaction should take place to assist or protect that customer which reasonably corresponds to the circumstances. Online gambling providers should ensure responsible gambling policies and procedures are in place to allow staff to detect and assist customers who may be experiencing problems with gambling.

25. The 2019 Code details that problem gambler red flag behaviours may include, but are not limited to gambling for an extended period; changing gambling patterns; increase in deposit frequency; escalating sums of money deposited; thinking they can control outcomes or believes myths; accusing an online gambling provider of changing payouts or rigging systems; admissions of being drunk or under the influence of other drugs; exhibiting signs of distress such as crying or swearing; expressing guilt or remorse for gambling; verbally abusing staff; threats to property or staff; remarks that may indicate serious overspending; repeatedly commenting about family problems; showing concern about losses and payouts; indicating they need a break from gambling; repeatedly self-excluding from gambling and or disclosing problems with gambling.

26. The complainant has submitted that he displayed a number of these red flag behaviours while operating his brother's Betfair betting account including that his betting patterns were erratic, he deposited large amounts of money on a weekly basis and that when he had money in the betting account, he often gambled for extended periods of time.
27. While the Commission notes that the complainant was operating his brother's betting account in contravention of Betfair's terms and conditions, given that Betfair were unaware of this, the Commission has determined to review the activity on the betting account (including having listened to several customer interactions with Betfair via telephone) in order to form a view as to whether any red flag behaviour existed that should have prompted Betfair to engage with the account holder to determine whether the account holder was gambling with money that he could afford to lose and without experiencing harm.
28. Having done so, the Commission agrees with the Betfair submission that the activity on the account was not of a nature to warrant a responsible gambling interaction given that:
 - a. of the total deposits made into the betting account from 2015 to its closure in March 2020, only 22 individual transactions exceeded the value of \$1,000. These 'higher' value transactions were spread consistently across 2015, 2016 and 2017;
 - b. the average deposit transaction value from 2015 onwards was \$173.60 with the vast majority of deposits being \$300 or less in value;
 - c. the average bet stake size was \$44.83 from 2015 onwards;
 - d. the account consistently wagered across racing products; and
 - e. the complainant did not display any red flag behaviours in communications or interactions with Betfair staff.

Decision

29. The Commission is satisfied that the complainant's brother's Betfair betting account was operated in contravention of Betfair's terms and conditions from at least 26 August 2015 which is when the complainant's bank account details were first registered against the complainant's brother's Betfair betting account.
30. The Commission is also satisfied that Betfair were not aware that the complainant's brother's Betfair betting account was being operated in contravention of Betfair's terms and conditions until the completion of an audit on withdrawals on 16 March 2020. The Commission is satisfied that once this was identified, Betfair took the appropriate action to immediately close the complainant's brother's Betfair betting account.
31. The Commission is also satisfied that the activity on the complainant's brother's betting account was not of a nature to trigger a responsible gambling customer interaction.
32. The Commission is satisfied that the conduct of Betfair was appropriate given the circumstances and does not give the Commission cause to declare that bets made through the complainant's brother's betting account were anything but lawful bets. As a result, the Commission is of the view that there no cause for Betfair to return any monies to the complainant in this matter.

Review of Decision

33. Section 109(7) of the Act provides that a determination by the Commission of a dispute referred to it pursuant to section 109Y(2) of the Act shall be final and conclusive as to the matter in dispute.



Cindy Bravos
Presiding Member
Northern Territory Racing Commission

23 March 2022